

ALPINE TIMBER CORP.

IBLA 94-882

Decided November 4, 1997

Appeal from a decision of the Malheur Resource Area Manager, Bureau of Land Management, Oregon, assessing damages for timber trespass. OR-030-7557.

Affirmed.

1. Trespass: Measure of Damages

Under 43 C.F.R. § 9239.1-3(a), unless state law provides stricter penalties, the minimum damages applicable to nonwillful timber trespass include twice the fair market value of the timber at the time of the trespass, and BLM's assessment of damages so calculated will be affirmed where the record supports its computation of the amount of board feet of timber cut, and no evidence to the contrary is submitted.

APPEARANCES: J. David Coughlin, Esq., Baker City, Oregon, for Appellant; Ralph Heft, Malheur Resource Area Manager, Vale, Oregon, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Alpine Timber Corporation (Alpine) has appealed an August 2, 1994, Decision of the Malheur Area Office, Bureau of Land Management (BLM), Oregon, assessing \$12,384 in damages for a timber trespass.

On November 6, 1993, a BLM official issued an "Initial Report of Unauthorized Use" stating that a large ponderosa pine had been cut in trespass on BLM land in the SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of sec. 4, T. 18 S., R. 37 E., Willamette Meridian, Malheur County, Oregon.

By letter of January 25, 1994, BLM notified Alpine that the tree was removed while Alpine was logging adjacent private timber land during October 1993, and that a survey would be performed in the spring of 1994 to determine the location of the property line between BLM and the private land. The BLM also issued a trespass notice stating that "9.9 Mod. Ft. [thousand board feet] of Ponderosa Pine" had been cut and removed in violation of Oregon law and 43 C.F.R. § 9239.0-7.

On August 2, 1994, BLM issued the Decision under appeal. That Decision merely stated that there had been no response to the trespass notice and that "[y]our liability is summarized on the enclosed bill." The bill was for 9,000 board feet (Mbf) of ponderosa pine sawtimber @ \$688/M for a total of "\$6,192.00 (sgl.) \$12,384.00 (Dbl.)." The bill required the payment of \$12,384.

Alpine's reasons for appeal, which were included in its notice of appeal, are quoted in their entirety:

1. The tree that was cut was outside the marked boundaries of the BLM property.
2. The tree did not contain 9,000 Mbf [sic].
3. The value of the timber was not \$688/M.

In his answer, the Malheur Resource Area Manager states that BLM's 1994 survey showed the tree stump to be 25.89 feet inside public land. The Area Manager relates in his answer that two BLM foresters measured "the subject stump and tree length to the cut top. The top was very easy to find as it lay beside the skid trail which left quite a depression from this big tree being skidded to the landing. There was no evidence that this top had been moved from where it fell when the tree was cut down." (Answer at 2.) From the average stump diameter (64.75 inches), the foresters determined that the tree had a diameter breast height of 64 inches. From the measurement between stump and the top of the cut (114.5 feet), it was determined that seven logs, each 16 feet in length, had been removed. Net volume was determined by taking the form class and a defect and breakage allowance from the "1973 Castle Rock timber sale in the same area of this trespass." Id. The BLM calculated a net volume of 9 Mbf. The Area Manager states that BLM's values were also run through the Forest Service computer in Ft. Collins, which yielded a net figure of 10 Mbf. However, BLM based its assessment on 9 Mbf and determined fair market value "by averaging values provided by BLM's Oregon State Office and a value from the Oregon Department of Revenue Immediate Harvest Value Tax (Severance) Tables." Id.

The Area Manager further provided a detailed explanation for BLM's determination of the value of the timber at \$688/Mbf. He also stated that Oregon State law requires the payment of "double stumpage value for non-willful trespass." (Answer at 1.)

At the time Alpine filed its notice of appeal in this case, it did not have the benefit of the Area Manager's explanation of the basis for the calculation of trespass damages. The Decision itself provided no supporting rationale for requiring the payment of \$12,384. However, Alpine has filed no response to the Area Manager's Answer. Thus, we are left with Alpine's conclusory allegations of error and the Area Manager's detailed explanation.

[1] We have reviewed the case file in light of the damage calculations offered in the Area Manager's Answer and find no reason to disturb the result based on the conclusory allegations of error. Assessment of damages is governed by 43 C.F.R. § 9239.1-3(a), which provides:

Unless State law provides stricter penalties, in which case the State law shall prevail, the following minimum damages apply to trespass of timber \* \* \*:

\* \* \* \* \*

(3) Twice the fair market value of the [timber] at the time of the trespass when the violation was nonwillful, and 3 times the fair market value at the time of the trespass when the violation was willful.

Alpine has failed to present any evidence to cast doubt upon BLM's conclusions either with regard to the survey or the valuation of the timber taken in trespass. In a case such as this, the burden is on the Appellant to show by a preponderance of the evidence that BLM's survey was in error, and/or that its value calculations were flawed. See Fred Wolske, 137 IBLA 211, 217-19 (1996). No showing of error has been made.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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Franklin D. Arnese  
Administrative Judge